

E-002/GR-92-1185 ORDER GRANTING CLAIM FOR INTERVENOR COMPENSATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application of Northern
States Power Company for Authority to
Increase Its Rates for Electric Service in the
State of Minnesota

ISSUE DATE: June 24, 1994

DOCKET NO. E-002/GR-92-1185

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PROCEDURAL HISTORY

On March 4, 1993, Mankato Area Environmentalists (MAE) filed a petition for a preliminary determination of eligibility to receive intervenor compensation. MAE anticipated seeking compensation for its intervention in the above-captioned Northern States Power Company (NSP) general rate case.

On April 8, 1993, the Commission issued its ORDER GRANTING PRELIMINARY DETERMINATIONS OF ELIGIBILITY FOR INTERVENOR COMPENSATION. In that Order the Commission found that MAE (and the Senior Federation, another intervenor) had satisfied the requirements under Minn. Rules, Part 7831.0500 for a preliminary determination of eligibility. The Commission found that MAE's filing was timely and complete, and that the organization was a proper intervenor. The Commission also made the necessary preliminary determination that MAE lacked sufficient financial resources to participate effectively in the rate case, absent an award of intervenor compensation.

In the April 8, 1993 Order, the Commission declined to make a preliminary determination on any of the discretionary factors listed under Minn. Rules, Part 7831.0500. Among these factors are material assistance to Commission considerations, duplicative positions supported by intervenors, and unrealistic expectations for compensation.

On September 29, 1993, the Commission issued its FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER in the NSP general rate case. On January 14, 1994, the Commission issued its ORDER AFTER RECONSIDERATION.

On April 11, 1994, MAE filed its Petition for Intervenor Compensation.

No party commented on MAE's petition.

The matter came before the Commission for consideration on June 9, 1994.

FINDINGS AND CONCLUSIONS

I. The Governing Rules

A. Minn. Rules, Part 7831.0500, Subpart 3. Effect of Preliminary Determination on Eligibility

According to this rule section, the Commission's preliminary determination on eligibility does not guarantee either a grant or a denial of a compensation award. The preliminary determination does, however, establish a presumption either for or against an eventual award. If the preliminary determination is for a grant of intervenor costs, the Commission must overcome a presumption of eligibility if it wishes to deny the final claim. If the preliminary determination is against a grant of intervenor costs, the applicant must overcome a presumption that the final claim for costs will be denied. If the Commission has declined to make a preliminary determination on the discretionary factors listed in Minn. Rules, Part 7831.0500, subpart 2, no presumption is established regarding those factors.

B. Minn. Rules, Part 7831.0600. Claim for Compensation

An intervenor filing a claim for a compensation award must do so within 90 days after the time for reconsideration has elapsed or the date the Commission issued its Order after reconsideration. The claim must contain an adoption or amendment of the original petition elements, a detailed description of intervenor services and costs, and a description of how the intervenor's contribution to the proceeding may have materially assisted the Commission.

C. Minn. Rules, Part 7831.0800. Award of Compensation

In order to be granted a compensation award, an intervenor must have materially assisted the Commission in its deliberations, and must have insufficient financial resources, but for the award, to afford all or part of its intervenor costs.

This rule section provides a list of factors, no one of which is to be dispositive, for the Commission's determination of material assistance. The section also provides a list of factors related to financial need.

II. MAE's Claim

A. MAE's Rate Case Participation

MAE is a non-profit organization of approximately 35 members concentrated in the Mankato area. MAE concerns itself with environmental issues such as solid waste planning and the local municipal solid waste landfill. In the NSP rate case, MAE focused on issues surrounding the processing of refuse derived fuel (RDF) by NSP's unregulated affiliate, NRG-RR, and the affiliate's sale of RDF to NSP for use in its Red Wing and Wilmarth generating facilities.

In the NSP rate case MAE argued that the Red Wing and Wilmarth facilities should be cost-capped at the PURPA qualifying facility (QF) avoided cost level. MAE raised the possibility of "self-dealing" between the NSP's unregulated affiliate producing RDF and the NSP regulated facilities burning the fuel. MAE also questioned the prudence of NSP's initial contracts with counties to burn garbage and NSP's failure to contract for price adjustments if pollution investments were later required.

Neither the Administrative Law Judge assigned to the NSP rate case nor the Commission adopted MAE's arguments in the rate case. The Commission found that the usual ratemaking

standard of prudence and reasonableness should be applied to RDF issues, rather than MAE's cost-capping concept. The Commission found no evidence in the record of imprudence or inappropriate "self-dealing" on the part of NSP.

B. The Elements of MAE's Claim for Compensation

In its claim for compensation MAE adopted and incorporated the financial information in its preliminary filing. The financial figures, when updated, showed that MAE owed its representative \$7,328.02 for mileage, costs, and intervention services on its behalf. Absent an award of compensation, MAE would be unable to pay for these expenses and services.

MAE stated that it had materially assisted the Commission throughout the proceedings. MAE presented evidence from the ratepayer's perspective in the rate case. According to MAE, its testimony and briefing helped the Commission to narrow RDF issues to three areas: the legal standard to which NSP should be held; the prudence of NSP's RDF decision making; and the subsidization of RDF operations by ratepayers. MAE stated that its focus on the Company's prudence and on environmental issues were helpful to the Commission.

III. Commission Action

The Commission finds that MAE has satisfied the standards for an award of compensation. The financial information submitted shows that MAE would be unable to pay for services and costs associated with intervention, but for a compensation award. The costs claimed were reasonable for the benefits rendered. The Commission also agrees with MAE that its efforts materially assisted the Commission in its deliberations.

Although the Commission did not adopt MAE's position in the rate case, this is only one factor under Minn. Rules, Part 7831.0800, and is not meant to be dispositive of itself. MAE's testimony and briefing presented an important and unique position which otherwise might not have been brought to the Commission's attention. MAE clarified points in the complex RDF area and provided materially useful information not of common knowledge. MAE's intervention brought a useful focus to issues of prudence, affiliated transactions, and competition with qualifying facilities.

MAE has satisfied the standards under Minn. Rules, Part 7831.0800 for an award of intervenor compensation. The Commission will grant the intervenor its entire request of \$7,328.02.

ORDER

1. The Commission grants MAE's claim for intervenor compensation as presented.
2. NSP shall pay MAE its compensation claim within 30 days of the date of this Order. Within ten days of the payment of the compensation claim to MAE, NSP shall file a statement of compliance with the Commission.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)